SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 04/30/2021 TIME: 08:20:00 AM DEPT: 41

JUDICIAL OFFICER PRESIDING: Ronda McKaig
CLERK: Kim Goodman
REPORTER/ERM: Victoria Valine

CASE NO: **56-2021-00552428-CU-WM-VTA**
CASE TITLE: **City of Oxnard vs. County of Ventura**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Motion for Preliminary Injunction (CLM)

APPEARANCES
Andrew E Schouten, counsel, present for Petitioner,Cross - Defendant(s) telephonically.
Lloyd A Bookman, counsel, present for Cross - Complainant,Respondent(s) telephonically.
Jordan Kearney, counsel, present for Cross - Complainant,Respondent(s) telephonically.

At 8:57 a.m., court convenes in this matter with parties present as previously indicated.

Judge McKaig discloses her previous employment with County Counsel and determines it does not disqualify her from hearing this matter.

Counsel have received and read the court's written tentative ruling.

The Court gives its tentative ruling to deny the Motion for Preliminary Injunction.

Matter submitted to the Court with argument.

The Court finds/orders:

Matter is taken under submission.

Having taken the matter under submission, the Court rules as follows:

"The power to issue preliminary injunctions is an extraordinary one and should be exercised with great caution and only where it appears that sufficient cause for hasty action exists." (*West v. Lind* (1960) 186 Cal.App.2d 563, 565.)

The City of Oxnard ("City") moves for a preliminary injunction to enjoin the County of Ventura and Ventura County Medical Services Agency (collectively, "County") from providing exclusive emergency ambulance services within City limits – something the County has been doing for some 50 years. City also asks the Court to enjoin County from otherwise disrupting City efforts to implement and operate its own ambulance services within its jurisdiction. As set forth below, City has not established a likelihood of prevailing at trial or that the balance of harm weighs in City's favor. The Court also finds that the public interest supports maintaining the status quo. The Court respectfully denies City's motion.

In connection with this ruling, the Court GRANTS all requests for judicial notice. The Court SUSTAINS County's objections 2-14, 16, 17, 19-21, 23, 27-29, 32-39, 44-49, 51-53, 55, and 56 in part. The Court SUSTAINS City's objections 1, 2, 8, 9, 11-13, 15, 17, 19, 21, and 23.

BACKGROUND

In 1971, several cities (including Oxnard) and County entered into a Joint Powers Agreement ("JPA") regarding ambulance services. The JPA provides that the County will contract for and administer the provision of ambulance services within each city that is a party to the JPA.

In 1980, the Legislature enacted the Emergency Medical Services System and the Prehospital Emergency Medical Care Personnel Act ("EMS ACT"), which established a coordinated and integrated approach to the provision of emergency medical services ("EMS"). The EMS Act authorized counties to develop an EMS program and to designate a local EMS agency to administer the program. Section 1797.201 of the EMS Act requires counties, upon request, to contract with cities to provide prehospital EMS to requesting cities. Section 1797.201 also includes a transitional provision that allows cities to continue to administer any prehospital EMS those cities administered as of June 1, 1980. Ambulance services are part of prehospital EMS.

Thereafter, the County formed Ventura County Emergency Medical Services ("VCEMS"), an agency designated to administer EMS throughout the county, including contracting with EMS providers and developing EMS plans. Since its inception, VCEMS has administered the EMS provided to City, including ambulance services.

This action arises out of City's desire to establish a municipal ambulance service to begin operations starting on July 1, 2021. City claims defendants are impeding and threatening to interfere with these efforts and City seeks a preliminary injunction to enjoin County from providing ambulance services within City's jurisdiction and to enjoin County from interfering in City's efforts to establish its own ambulance services.

LEGAL STANDARDS

"A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor." (Code Civ. Proc., § 527, subd. (a).) The issuance of a preliminary injunction is an extraordinary remedy, and courts must exercise great caution in granting such relief. (*West, supra,* 186 Cal.App.2d at p. 565.) "A party seeking injunctive relief must show the absence of an adequate remedy at law." (*Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1564). Where a preliminary injunction changes the status quo, it will be scrutinized even more closely for an abuse of discretion. (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625.)

"Trial courts evaluate two interrelated factors when deciding whether to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail at trial; the second, the interim harm that the plaintiff will likely sustain if the injunction were denied as compared to the harm that the defendant will likely suffer if the injunction were issued." (*Pro-Family Advocates v. Gomez* (1996) 46 Cal.App.4th 1674, 1680–1681). The burden is on the party seeking injunctive relief "to show all elements necessary to support issuance of a preliminary injunction." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481).

The Court must also consider the public interest in granting or denying the preliminary injunction because City seeks to enjoin the actions of a public entity. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1472–1473 ["Where, as here, the plaintiff seeks to enjoin public officers and agencies in the performance of their duties the public interest must be

considered.")

ANALYSIS

City's Likelihood of Prevailing at Trial

To convince the Court that it is likely to prevail at trial, City must demonstrate a likelihood that it may legally contract for EMS and may exclude County from providing such services within the City. County claims that City's requested relief is barred by Health & Safety Code section 1797.201, which is part of the EMS Act. The Court agrees that the City is unlikely to prevail in light of section 1797.201.

"Prior to the enactment of the EMS Act, the law governing the delivery of prehospital emergency medical services was haphazard." (*County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 914). The EMS Act "created a comprehensive system governing virtually every aspect of prehospital emergency medical services. The Legislature's desire to achieve coordination and integration is evident throughout." (*Id.*, at 915).
The Act states that each county may develop an emergency medical services program and that each county doing so shall designate a local EMS agency. (Health & Saf. Code, § 1797.200). Once a local EMS agency implements its system, all providers of prehospital emergency medical services within its jurisdiction must operate within that system. (Health & Saf. Code, § 1797.178).

The EMS Act, through section 1797.201, specifically addressed the role of cities and local fire districts. Section 1797.201 reads "Upon the request of a city or fire district that contracted for or provided, as of June 1, 1980, prehospital emergency medical services, a county shall enter into a written agreement with the city or fire district regarding the provision of prehospital emergency medical services for that city or fire district. Until such time that an agreement is reached, ... the administration of prehospital EMS by cities and fire districts presently providing such services shall be retained by those cities and fire districts..." (Health & Saf. Code, § 1797.201.)
This section "is essentially a grandfathering of existing emergency medical service operations until such time as these services are integrated into the larger EMS system. The apparent purpose of this grandfathering provision was to 'allow such entities to protect the investments they had already made in various assets-emergency medical equipment, infrastructure, personnel, etc.' [citation omitted], as well as to ensure against the disruption of adequate emergency medical services [citation omitted]." (*Valley Medical Transport, Inc. v. Apple Valley Fire Protection Dist.* (1998) 17 Cal.4th 747, 758.) "[T]he language of section 1797.201 itself provides only for cities and fire districts to *continue* to do what they had been doing as of June 1, 1980, and not to resume what they ceased to do." (*Ibid.*)

City contends it contracted for emergency ambulance services prior to the enactment of the EMS Act through the JPA and is, therefore, allowed to continue to contract for such services pursuant to section 1797.201. City argues that, in providing ambulance services for the past 50 years, County acted pursuant to City's authority and express consent as set forth in the JPA. The JPA allows City to withdraw, which City has done. City contends it never ceded any power to County under the JPA, but that instead, County provided ambulance services pursuant to powers held exclusively by City, which powers City continues to hold.

The Court has difficulty squaring City's contentions with the JPA, the undisputed facts and section 1797.201. The JPA makes clear that the cities agreed that County was the entity that would contract for ambulance services within their jurisdictions,[1] and the evidence submitted by County makes clear that County was indeed the contracting party for those services over the course of the subsequent 50 years. The notion that City "contracted for" ambulance services through the JPA as those words are used in section 1797.201 requires the Court to interpret section 1797.201 to exempt both entities that contracted *directly* for ambulance services and entities that did so *indirectly*. Such an interpretation would render section 1797.201's exemption language meaningless, because cities that were not contracting directly

for ambulance services as of 1980 most certainly must have agreed (by contract, resolution or ordinance) that other entities would contract for those services on their behalf. Under City's interpretation, virtually no city would be prevented from providing its own ambulance services, rendering the limiting language in section 1797.201 mere surplusage. The Court is required to avoid statutory interpretations that create surplusage. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 95.)

Nor does the Court find persuasive City's argument that – notwithstanding the JPA and City's delegation of power to County – City retained all powers to contract for ambulance services. Under section 1797.201, relinquishment of City's authority had to be by formal agreement or acquiescence, voluntary and express. Prior to the enactment of the EMS Act, City entered into a formal agreement (the JPA) pursuant to which County and County alone could administer the provision of emergency services within City's boundaries. City was bound by the JPA and had no power to administer its own ambulance services while it remained a party to the agreement. City was a party to the JPA at the time the EMS Act was enacted in 1980 and 40 years beyond. City agreed and acquiesced to County providing ambulance services by allowing County to provide the services for 50 years. (See *Valley Medical Transport, Inc.*, *supra,* 17 Cal.4th at p. 760 [fire district acquiesced by selling its only rescue squad vehicle capable of emergency transport].) A city's control over emergency medical services is fixed by what it administered as of June 1, 1980. (*Ibid*.) City administered nothing as of that date and had no right to do so while a party to the JPA.

Finally, regardless of whether City retained any authority to contract for services, City cannot dispute that County was the entity administering and contracting for the provision ambulance services within City from 1971 to the present. The Supreme Court has made clear that cities cannot bar counties from providing EMS services in their jurisdictions where those entities had historically provided such services. (*County of Santa Bernadino, supra*, 15 Cal.4th at p. 934.)

Based on the record before the Court, City has not demonstrated it was contracting for or providing ambulance services as of June 1, 1980. Section 1797.201 prevents a city from administering its own prehospital EMS (including ambulance services) unless it was contracting for or administering those services as of June 1, 1980. As a result, it appears that City is unlikely to prevail at trial.

Balance of Harms

City argues that it will suffer irreparable injury without the requested injunction. City argues it will lose just over $1 million in new revenues – a profit it expects to realize after two years of operations. City further contends it cannot recover these damages from County because County is immune from suit.

City's alleged damages, which are speculative and which *might* be incurred at the end of a future two-year period, do not support City's request for the immediate relief inherent in a preliminary injunction. City's argument that it cannot recover damages from County is not supported by citation to legal authority. Instead, City characterizes as a "judicial admission" a legal argument made by County in opposition to City's request for a temporary restraining order. Legal arguments are not judicial admissions, nor does the case cited by City stand for such a proposition.

City also argues that it will suffer irreparable injury because County is violating City's rights to provide its own ambulance services. The Court has analyzed this issue in connection with its discussion of City's likelihood of prevailing at trial. At this stage, the Court is not convinced that City has the legal right to provide ambulance services. As a result, this is not a harm that weighs in City's favor.

In contrast, County argues that allowing City to withdraw from the current system of ambulance services could upend the entire system and result in decreased levels of service or care. This is also speculative, albeit as to a greater harm. While the harms alleged on both sides are speculative, the Court finds that the balance of harms weighs in favor of denying the motion for preliminary injunction.

Public Interest

City argues that the public interest favors the requested relief because public policy favors local control over the provision of EMS and favors public ambulance service providers over private providers. This latter argument is perplexing since City purports to contract a private ambulance service that is "the second largest ambulance company in the country." (Reply, page 1:3.) In any event, the public policy as set forth in the EMS Act favors control at the county level, which will not be served if the preliminary injunction is granted.

City also argues that the current ambulance services provided by County are substandard. The Court agrees this is a proper public interest consideration, but City's argument is not supported by admissible evidence. Additionally, City does not explain how its own proposed service will be immune from the quality of service issues allegedly suffered by the current provider.

Finally, City is currently in Exclusive Operating Area ("EOA") 6 along with Port Hueneme and other unincorporated areas. (Shepherd dec., ¶ 5, 6). Such areas are permitted by Health & Safety Code section 1797.224 and serve as an administrative tool that allows EMS agencies to address the needs of their constituents in an economically efficient way. County argues that administration of services for EOA 6 would be undermined by City's efforts to provide its own services. This concern finds support in the law, and as the Supreme Court stated, "[t]he ability to create EOA's recognized in section 1797.224 would be rendered largely futile, however, if cities or fire districts that had no history of operating ambulance services were able at any time to expand into these services, thereby partially nullifying an existing EOA." (*County of San Bernardino, supra*, 15 Cal.4th at p. 932.)

City argues it offered to enter into a contract to secure services for the other areas in EOA 6 and that County rejected this offer. However, the public interest is not served by forcing other municipalities to rely on emergency services coordinated by individuals for whom they cannot vote, as the County points out.

CONCLUSION

For the foregoing reasons, City's motion for a preliminary injunction is denied.

[1] The JPA created the Ventura County Ambulance System to be administered by County. (Plaintiff's RJN, Ex. 7, ¶ 2). The JPA provides that the cost and expense of administration of the System would be assumed by County and that City "shall have no obligation to contribute toward said cost or expense." (*Id.*, Ex. 7, ¶ 3). The JPA states that County shall issue all permits or licenses for ambulance services and the cities agreed "not to issue any permit or license for ambulance operations..., it being the intent of this section that this power shall be exercised by County." (*Id.*, Ex. 7, ¶ 4). The JPA allows County to contract with one ambulance company within each service area. (*Id.*, Ex. 7, ¶ 7). If any city had awarded an exclusive contract for emergency services, it was to assign the contract to County which would assume and enforce it until it expired. (*Id.*, Ex. 7, ¶ 7A).

Notice to be given by the clerk.